

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

*Motion for Leave to File a Second or
Successive Motion to Vacate, Set Aside
or Correct Sentence under
28 U.S.C. § 2255
by a Prisoner in Federal Custody*

Name _____

Prisoner No. _____

Place of Confinement _____

Instructions
Read Carefully

- 1) This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.
- 2) All questions must be answered concisely in the proper space on the form.
- 3) The Judicial Conference of the United States has adopted the 8 1/2 x 11 inch paper size for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings must be on 8 1/2 x 11 inch paper. Otherwise we cannot accept them.
- 4) Additional pages are not permitted except with respect to additional grounds for relief and facts upon which you rely to support those grounds. Do not submit separate petitions, motions, briefs, arguments, etc., *except* in capital cases.
- 5) In accordance with the Antiterrorism and Effective Death Penalty Act of 1996, as codified at 28 U.S.C. § 2255, effective April 24, 1996, before leave to file a second or successive motion can be granted by the United States Court of Appeals, ***it is the movant's burden*** to make a ***prima facie*** showing that he or she satisfies either of the two following conditions found in 28 U.S.C. § 2255:

- 1) Newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; **or**
 - 2) A new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.
- 6) When this motion is fully completed, **mail the original and three copies to:**

**United States Court of Appeals for the Tenth Circuit
Office of the Clerk
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257**

MOTION

1. (a) Location of the United States District Court which entered the judgment of conviction under attack _____

(b) Case number _____
2. Date of judgment of conviction _____ Guilty plea _____ Jury verdict _____
3. Length of sentence _____ Sentencing Judge _____
4. Nature of offense for which you were convicted _____

5. Did you appeal the conviction and sentence? **YES** () **NO** ()
6. If you appealed, name of court, result, date of result: _____

7. Have you ever filed a motion to vacate in any federal court which is related to this conviction and sentence?
YES () **NO** () If "yes", how many times? _____
(If more than one, complete 8 and 9 below as necessary.)
As to the first federal motion, give the following information.
(a) Name of court

(b) Case number

(c) Nature of proceeding _____

(d) Grounds raised (list **all** grounds, using extra pages if necessary) _____

(e) Did you receive an evidentiary hearing on your motion? **YES** () **NO** ()

(f) Result _____

(g) Date of result _____

8. As to any second federal motion, give the same information:

(a) Name of court

(b) Case number

(c) Nature of proceeding

(d) Grounds raised (list **all** grounds, using extra pages if necessary) _____

(e) Did you receive an evidentiary hearing on your motion? **YES** () **NO** ()

(f) Result _____

(g) Date of result _____

9. As to any third federal motion, give the same information:

(a) Name of court

(b) Case number

(c) Nature of proceeding

(d) Grounds raised (list **all** grounds, using extra pages if necessary) _____

(e) Did you receive an evidentiary hearing on your motion? **YES** () **NO** ()

(f) Result

(g) Date of result

10. Did you appeal the result of any action taken on your federal motion? (Use extra pages to reflect additional petitions if necessary.)

(1) First Motion **NO** () **YES** () Appeal No. _____
(2) Second Motion **NO** () **YES** () Appeal No. _____
(3) Third Motion **NO** () **YES** () Appeal No. _____

11. If you did **not** appeal from the adverse action on any motion, explain briefly why you did not:

12. State **concisely** every ground on which you **now** claim that you are being held unlawfully. Summarize **briefly** the **facts** supporting each ground.

A. Ground One:

Supporting **FACTS** (tell your story briefly without citing cases or law): _____

Was this claim raised in a prior motion? YES () NO ()

Does this claim rely on a “new rule of law?” YES () NO ()

If “yes,” state the new rule of law (give case name and citation): _____

Does this claim rely on “newly discovered evidence?” YES () NO ()

If “yes,” briefly state the newly discovered evidence and why it was not previously available to you _____

B. Ground Two: _____

Supporting **FACTS** (tell your story briefly without citing cases or law): _____

Was this claim raised in a prior motion? YES () NO ()

Does this claim rely on a “new rule of law?” YES () NO ()

If “yes,” state the new rule of law (give case name and citation): _____

Does this claim rely on “newly discovered evidence?” **YES** () **NO** ()

If “yes,” briefly state the newly discovered evidence and why it was not previously available to you

Additional grounds may be asserted on additional pages if necessary.

13. Do you have any motion or appeal now pending in any court as to the judgment now under attack? **YES** () **NO** ()

If “yes,” name of court _____ Case number _____

Nature of proceeding _____

Grounds raised _____

Wherefore, movant prays that the United States Court of Appeals for the Tenth Circuit enter an order authorizing the district court to consider movant's second or successive motion to vacate under 28 U.S.C. § 2255.

Movant's Signature

I declare under Penalty of Perjury that my answers to all the questions in this motion are true and correct.

Executed on _____
(date)

Movant's Signature

PROOF OF SERVICE

(The movant must send a copy of this motion and all attachments to the United States Attorney's office in the district in which he or she was convicted.)

I certify that on _____, I mailed a copy of this Motion* and
(date)

all attachments

to _____

at the following address: _____

Movant's Signature

*Pursuant to Fed. R. App. P. 25(a)(2)(c), "A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid."